

Briefing document

Beneficial ownership registers

Introduction

Looking through the legal ownership of entities such as companies, Limited Liability Partnerships (LLPs), trusts, certain Scottish partnerships and other similar entities ("UK legal entities") to find the ultimate beneficial owner, has become a hot topic. Whilst the UK was already spearheading the implementation of a publicly searchable corporate register for UK legal entities, the UK government has also launched a beneficial ownership register for trusts, and has consulted on broadening the scope of the register to include overseas legal entities that own or are seeking to acquire UK property and/or engage in public procurement.

In addition, a number of other jurisdictions are also establishing their own beneficial ownership registers, and may exchange information with the UK authorities.

This note reports the extent to which beneficial ownership needs to be reported under current law. The European Union has passed a new money laundering directive (the Fifth Money Laundering Directive – 5MLD) which may change the position in future. More detail on this point is included below where relevant.

What does this note cover?

- Who needs to be named on the UK's public register for UK legal entities
- Mandatory compliance and potential criminal penalties
- Individuals who may be protected from disclosure
- Consultation on a beneficial ownership register to include overseas legal entities
- The trust beneficial ownership register
- Beneficial ownership registers around the world

Background

There is now a mandatory requirement to inform Companies House of the individuals/relevant legal entity(ies) ("**RLE**") 'behind' UK legal entities. This information is publicly available subject to some protections outlined within this note.

Public data on companies, for example, now goes beyond identifying direct shareholdings and details of directors. Companies need to trace through to their ultimate **beneficial owners**, wherever resident, including individuals who may or do exert **influence** or **control** (on them or on their immediate owners) as defined under UK company law. This is a significant change in how ultimate corporate ownership is determined and disclosed.

These individuals/RLEs are referred to as People with Significant influence and Control (PSCs).

Requirements

Affected entities must both maintain their own internal PSC register and make the necessary notifications to Companies House. New information and changes to PSCs must be added to the internal PSC register within 14 days, and/or notify Companies House of such changes within a further 14 days

Entities affected

The UK legal entities that are required to comply with some or all of the requirements are UK LLPs, eligible Scottish partnerships, and UK corporates. However, there are exemptions, such as those UK legal entities that (a) are listed on the London Stock Exchange and already disclose information on shareholdings under certain listing rules, and (b) have voting shares listed in the UK or European Economic Area (EEA) on a regulated market, or specified markets in the USA, Switzerland, Japan or Israel.

Notably, AIM listed companies are **not** exempt from creating and holding an internal register of people with significant control ("**PSC register**").

Eligible Scottish partnerships are not required to maintain their own PSC register.

Who are PSCs?

PSCs are individuals who meet one or more of the five tests below:

1. An individual holds, directly or indirectly, more than 25% of the **shares** in the company;
2. An individual holds, directly or indirectly, more than 25% of the **voting rights** in the company;
3. An individual holds the right, directly or indirectly, **appoint or remove the majority of the board of directors**;
4. An individual has the **right to exercise**, or **actually exercises, significant influence or control** over the company;
5. Finally, where trustees of a **trust** or members of a **firm** that is not a legal person meet any of the above conditions (or would do if they were individuals), an individual who has the **right to exercise**, or **actually exercises, significant influence or control** over the activities of that trust or firm.

In addition, for conditions 4 and 5 it is irrelevant whether such influence or control has ever been exercised.

A registrable RLE is a company that meets any one or more of the above conditions 1 – 5, and (a) keeps its own PSC register, or (b) has voting shares that are admitted to a regulated market in the UK or elsewhere in the EEA, or on specified markets in Switzerland, the USA, Japan and Israel.

Where the first RLE in the company's ownership chain is not registrable (because it does not meet the requirements set out in the paragraph above), shares and rights in the company may be held indirectly by a registrable RLE having a majority stake (e.g. holding over 50% of the voting rights) through the unregistrable RLE. This criteria can be used to go up the ownership chain.

Where beneficial ownership of a company is held by a trust or another entity, the PSC in relation to that trust or entity will also need to be considered and disclosed (irrespective of jurisdiction or role). In certain cases where a trust beneficiary also owns shares personally, shareholdings may need to be aggregated in order to determine whether registration as a PSC is required.

At present, the guidance leaves this area somewhat vague, particularly in relation to trusts. For example if a person cannot appoint or remove trustees on their own, but could in conjunction with others, would that person be a PSC? Deloitte have sought clarification in this area, though this point has yet to be made clear.

UK companies, owning entities and PSCs all have obligations

Compliance with the rules is **mandatory**. A company is required to take all reasonable steps to ascertain whether they have any PSCs and if so, to identify them, notify the PSC in writing, insert the details into the PSC register and file the relevant statutory forms at Companies House. The company is also under a duty to maintain an accurate PSC register. In addition, a person or entity who knows or ought reasonably to know that they are a registrable person or RLE to notify the company if they have not themselves been given written notice by the company.

What is shown on the register?

The public register only contains the information of (a) registrable RLEs and (b) persons who have confirmed their details to the UK legal entity as PSCs in relation to that entity.

The public register contains the personal details of the individual(s) identified as a PSC including their service address and month and year of birth. The exact condition/s which they satisfy which makes them a PSC needs to be recorded. The UK legal entity must also hold the PSC's usual residential address and full date of birth in its PSC register. Companies House requires this information and although it will not publicly be disclosed, the information will be made available to law enforcement agencies, HMRC and credit agencies if required.

The PSC register can never be blank. The current status of the PSC information gathering must be recorded – such as if the UK legal entity has not succeeded in identifying its PSCs, if it is in the process of identifying PSCs or has concluded there are no PSCs. Specific statements are assigned to a company's status on the PSC register and these statements must be provided to Companies House.

Penalties

UK legal entities are obliged to take reasonable steps to identify PSCs. In cases where a PSC notice is not complied with, a UK legal entity has the right to effectively 'suspend' the relevant shares, i.e. suspend dividend, voting, sale and transfer rights. In practice, company directors may effectively have little option but to eventually use these powers in order to meet their own obligations.

Directors who fail to take reasonable steps to identify PSCs is punishable by fine, imprisonment, or both. Matching penalties apply to PSCs who fail to identify themselves or to anyone who provides false information in relation to a PSC or RLE. It is a criminal offence for individuals to fail to provide information for the PSC register.

Claim for protection from public disclosure

Applications may be made by either the UK legal entity or the PSC to Companies House on the grounds that the applicant **reasonably believes** that due to the activities of the UK legal entity or due to the connection of the PSC with that UK legal entity, the public information will put the applicant **or a person living with them** at **serious risk** of being subjected to **violence or intimidation**. The application must be accompanied by evidence which supports the applicant's statement.

In such cases the information must still be provided by the PSC to the company, and the fact that the information exists but is protected, will be made public. Tax authorities, and other law enforcement authorities, will also still be able to view the protected information.

Beneficial ownership register for foreign companies

The government has consulted on introducing a new beneficial ownership register for overseas incorporated legal entities (including companies) that own or are seeking to acquire UK real estate (whether commercial or residential) and/or are involved in UK public procurement. If enacted, the new register is expected to be modelled on the existing PSC register for UK legal entities, as outlined above.

Trust beneficial ownership register

The UK has also introduced a beneficial ownership register for trusts and estates with a "UK tax consequence". All trusts with a UK tax consequence in the 2016/17 tax year should have registered by 31 January 2018, though the deadline was effectively extended to 5 March 2018 by HMRC. Some trusts may have had an earlier deadline due to deadlines applicable to specific tax filing and payment obligations.

Trusts that have a UK tax consequence that are not already registered (e.g. trusts that incur a tax liability in 2017/18 but did not do so in 2016/17) must register by the 31 January following the tax year in which a registration requirement first arises (e.g. by 31 January 2020 if a trust is first required to register in relation to the 2018/19 tax year).

Broadly, once a trust is registered, annual filing is required in order to report any pertinent changes or to confirm that there are no such changes, though the HMRC system to report updates is currently in the process of being updated to provide full functionality.

The above requirements arise due to the enactment into UK law of the EU's Fourth Money Laundering Directive (4MLD). The UK has now signed the Fifth Money Laundering Directive (5MLD). The number and range of trusts that will be required to register beneficial ownership information will be significantly increased following the enactment of 5MLD into UK law, including a requirement for certain trusts that do not have a UK tax consequence to register.

A separate briefing note is available on request.

Beneficial ownership registers around the world

Many countries around the world have already created or have plans to make beneficial ownership registers.

Under the Fifth Money Laundering Directive (5MLD) EU Member States are required to launch publicly accessible registers of beneficial ownership of companies by January 2020.

The British Overseas Territories and Crown Dependencies either already have or will launch similar registers, although many are not publicly accessible. With the exception of Gibraltar (which as part of the EU needs to comply with 5MLD), the exact dates by which the British Overseas Territories and Crown Dependencies which have not already launched public registers will do so has not yet been determined, although the Crown Dependencies (Jersey, Guernsey and the Isle of Man) recently committed to achieve this by January 2023.

It is also notable that an intergovernmental body – the Financial Action Task Force (FATF) – recommends that competent authorities have access to adequate, accurate and timely information on the beneficial ownership and control of legal entities and share this with competent authorities from other jurisdictions. At the end of 2016, 53 countries were reported to have committed to the systematic sharing of beneficial ownership information. Over 200 jurisdictions have now committed to adopting FATF recommendations.

As a result, it may be that a person has several similar but different reporting obligations across diverse jurisdictions.

Find out more...

The contents of this note are aimed at providing a brief overview of the issues which need to be considered under the various rules and requirements relevant to disclosing beneficial ownership information, including legislation, issued guidance, announcements and information exchange agreements. Please be aware that it does not cover all aspects of this subject.

This is a complex area with numerous considerations which need to be taken into account. If you would like further information, please contact your usual Deloitte advisor or one of the people listed overleaf. This briefing note reflects our understanding of the law as at 23 August 2019.

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